IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 643 of 2002

For Approval and Signature:
HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAVAJI GUNVANTDAS MADHAVDAS - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ASHISH M DAGLI for Appellant(s) : 1,
MR DS PANDIT APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 11/09/2007

ORAL JUDGMENT

1. Heard Mr. A.M. Dagli, learned advocate for the appellant - original accused and Ms. D.S. Pandit, learned A.P.P for the State.

2. The appellant is a original accused of Sessions Case (N.D.P.S.) No.116 of 1994 and he has challenged the legality and validity of the judgment and order of conviction and sentence passed by learned Additional Sessions Judge, Rajkot on 3.5.3002. The learned Trial Judge found that the accused is guilty for the offence punishable under Section - 20 (A) (i) of the Narcotic Drugs & Psychotropic Substance Act (hereinafter referred to as " The Act") and also for the offence punishable under Section 20 (B) (ii) of the said Act. The accused is sentenced to undergo R.I. for five years for the offence punishable under Section 20 (A) (i) and to pay a fine of Rs.25,000/- and in-default, punishment imposed is of one year R.I. The similar quantum of punishment i.e. R.I. for five years and a fine of Rs.25,000/- is imposed for the offence punishable under Section 20 (B) (ii) of the Act and in-default punishment imposed is also of one year R.I.

3. Mr. A.M. Dagli, learned advocate has taken me through the judgment and order of conviction and sentence, and also through the evidence led by the prosecution witnesses examined, including the complainant and the police personnel, who were the members of raiding party.

4. To appreciate the say and submissions made by Mr. A.M.

Dagli and Ms. D.S. Pandit before this Court, firstly it would be beneficial to state the basic facts of the case of the prosecution which were placed before the learned trial court.

5. As per the say of the prosecution, on 9.4.1994, the Dy. S.P. was on visit at Gondal for annual inspection and at that time, one secret information was received through jeep driver of Dy. S.P., Shri Mayursinh Agarsinh that the appellant - original accused (hereinafter referred to as "the accused") is dealing in the business of cultivating and selling cannabis (Ganja) plants and therefore, the team headed by the Dy. S.P., Mr. Upadhyay had raided at the residence of the accused in presence of panchas. During the raid, the team found about 17 Kg. and 250 grams cannabis from two different wooden boxes and about 300 grams seeds of cannabis. Thereafter, the raiding team had entered into agricultural land of the accused and they found that about 8 plants of cannabis were there. The Muddamal was sealed in presence of panchas as narrated in panchnama drawn by the raiding officer and same was sent to public analyst.

6. It is further say of the prosecution that the Forensic Science Laboratory has opined that the muddamal received in different sealed containers, was cannabis defined in the Act and cannabis seeds etc.

7. While making submissions, Mr. Dagli has fairly submitted that the accused has already undergone substantive punishment imposed by the learned trial Judge. Ultimately, the learned Trial Judge has ordered that both these sentences shall run concurrently and at present the accused is in prison. But actually he is undergoing the imprisonment imposed as in-default punishment i.e. punishment to be undergone on account of non-payment of fine. He has instruction not to press the appeal against the order of conviction. But according to him the quantum of punishment imposed by the learned trial Judge, should be held harsh and appropriate reduction may be made. Ultimately, the cannabis found at the residence of the accused was less than commercial quantity, of course, it was more than small quantity prescribed. During the days, when the incident had occurred in the year 1994, the scheme of the Act was not applicable since 2.10.2001. But when it comes to the quantum of punishment, while dealing with the appeal, the Court positively considers the adequacy of the punishment in the background of the total punishment prescribed under the amended Act i.e. the Act under enforcement.

8. Upon entering into the merits of the submissions made by Mr. Dagli vis-a-vis the gravity of the offence found proved, it is difficult

for Court to reduce the substantive punishment imposed by the learned trial Judge as the accused was responsible to have quantity of cannabis in his residence and that too with quantity of about 17 Kgs. The offence found proved is more serious as he was also found in possession of those cannabis seeds in quantity of about 300 grams. The said could have been used for cultivation of cannabis plants. It is in the evidence that the accused found with 8 such plants cultivated by him in his agricultural land. The ownership of the agricultural land is not required to be established. The occupancy or conscious possession of the property i.e. the land by the accused is sufficient to link the accused with the crime. In that situation, the learned trial Judge appears to have imposed 5 years R.I. each for both these distinct offences. Ultimately, when the Court has stated that both the sentences shall run concurrently, then, at least it is important for this Court to observe that the quantum of punishment cannot be said to be harsh or much less the punishment that can be said to be inadequate.

9. There is some force on the other point in the arguments of Mr. Dagli. When the accused is asked to undergo R.I. for five years then at least the amount of fine ought not to have been exceeded to Rs.10,000/- for each of these two offences. So, the punishment of fine of Rs.10,000/- could have been imposed. Keeping in the mind the socio-

economical background, the total punishment of fine of Rs.50,000/-, in-default, punishment of two years would result in to extension of actual quantum of punishment. So at least this Court may reduce the amount of fine imposed. The Court may reduce in-default punishment imposed from one year R.I. to six months, if the amount of fine is not paid. Reasonable amount of fine, if imposed, normally the accused may think to pay it instead of undergoing imposed imprisonment for long period of about one year.

10. It is say of Mr. Dagli, that ultimately, the accused is undergoing substantive punishment of five years, then some reasonable reduction in the amount of fine imposed by the learned trial Judge, if it is ordered, it would be in the interest of justice. Reduction in the period of imprisonment undergone would take a wrong message to the society, in such a serious offence is also a point for consideration. .

11. Learned A.P.P. Ms. Pandit also submits that appropriate order may be passed, of course, resistance is that in-default punishment should not be reduced otherwise the accused may take undue advantage by not paying the amount of fine, may come out with reduced period of in-default sentence.

12. Having considered the above submissions and with totality,

the actual order of sentence of the amount of fine imposed for both these offences is reduced to the extent of Rs.15,000/- each in stead of Rs.25,000/-. so now, the accused shall pay the fine of Rs.15,000/- for the offence punishable under Section 20 (A) (i) and Rs.15,000/- for the offence punishable under Section 20 (B) (ii) of the N.D.P.S. Act, meaning thereby, the total amount of fine now Rs.30,000/- shall have to be paid by the accused. In the event of failure to pay the amount of fine, the accused shall undergo R.I. for one year for each of these two offences and no reduction is ordered in the quantum of punishment imposed by the learned trial Judge, accepting the resistance and logic placed by the learned A.P.P. The Court when think to reduce the amount of fine in-default sentence, if it is otherwise adequate and within legal compass should not be reduced to avoid apprehended misuse of the sympathy.

13. In view of the aforesaid discussion, present Appeal is hereby partly allowed. The judgment and order of conviction and sentence dated 3.5.2002 imposed by the learned trial Judge in Sessions Case No.116 of 1994 is hereby upheld and the substantive sentence of 5 years imposed by the learned trial Judge, is hereby confirmed for both the offences. However, the sentence of fine imposed the learned trial Judge is hereby ordered to be altered and the same is reduced to Rs.15,000/- (Rupees Fifteen Thousand only) for each of the offences by upholding

the in-default punishment imposed by the learned trial Judge. In case, the amount of fine is paid by the appellant - accused and he has already undergone the imprisonment required to be undergone in view of the judgment and order of learned trial Judge, the order of conviction and sentence under challenge, he shall be set at liberty forthwith, if not required in any other case. Order and direction accordingly.

(C.K. BUCH, J.)

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